

**New Castle City Board of Adjustment Hearing
September 4, 2014, 6:30 p.m.
City of New Castle's Town Hall
2nd and Delaware Streets**

Present: Donald A. Reese, Mayor
Daniel R. Losco, City Solicitor
David J. Athey, City Engineer

City Personnel: Jeff Bergstrom, City Code Official

Mayor Reese called the meeting to order at 6:30 p.m.

Mr. Losco read the Notice of Public Hearing that states, "An application has been filed by ECAR, LLC, 122 Stuyvesant Drive, New Castle, Delaware 19720 (Owner) and Rt. 9 Holdings, LLC, 9 Harlech Drive, Wilmington, Delaware 19807 (Applicant) for a property located at 0 South Side Seventh Street, New Castle, Delaware, Tax Parcel No. 21-014.00-398, seeking a variance from the City Code as follows: §230-28(c) Downtown Gateway Shared Parking Requirements: 214 parking spaces required; owner/applicant seeks approval for 166 parking spaces.

For the purpose of considering this application, the Board of Adjustment will hold a Public Hearing on Thursday, September 4, 2014, at 6:30 p.m. in Old Town Hall, 2nd Floor, located at 2nd and Delaware Streets, New Castle, Delaware."

Mr. Losco (himself from deliberations because of a previous association with the applicant. He will address any procedural issues that might arise.

An affidavit of publication was published in the *News Journal* and the *New Castle Weekly*. Mr. Bergstrom testified the property has been properly posted.

(Jeff Stapen, applicant, was sworn in.)

Attorney Brian Glancy, representing the applicant, provided an overview of the project. Mr. Stapen is the manager of Rt. 9 Holdings. The property is currently entitled to ECAR, LLC but under contract to Rt. 9 Holdings, LLC.

Mr. Glancy stated the request for a variance for 166 parking spaces results from the unique nature of the lot that was not created by the applicant, is not contrary to public interest, and there is no detrimental impact to the neighborhood or surrounding areas.

Mr. Stapen testified the project is a total lot size of approximately 8 acres, with four acres useable based on wetlands on the property. Plans call for a 120-unit apartment complex and 9,000 square foot of retail space. Each unit will be two bedrooms and two bathrooms. Parking has been maximized utilizing a lower level beneath all the buildings. The retail space will be the first lower level of the front of the building facing the street. The project meets all code requirements relating to building height, layout, unit size, and roof. The applicant is willing to use green roofs. Two digital photographs of the project (Exhibit B) were provided to the Board and described by Mr. Stapen. Parking spaces are the correct size and elevators in the buildings are incorporated into lower level spacing.

The Trustees of the New Castle Common (TNCC) owns property to the right side of the subject property. To the left is a parking lot and across the street is a boat storage yard.

Mr. Stapen said they have used the perimeter of the property for additional parking spaces. Space for loading/unloading, signage, trash removal, and mail access are on the left side of the building, thus preventing any parking there. Mr. Stapen noted if the wetlands were not present they would have enough area to meet the parking requirements under the Downtown Gateway (DG) zoning code.

Mr. Glancy referenced Section 230-28, (15) of the City Zoning Code detailing how parking requirements are calculated for the DG zoning district. Apartments are required to have 1.5 spaces per unit, with an opportunity for a reduction in parking requirements for mixed-use projects.

He referenced Section 230-28, 15 (A), (9), Retail Personal Services Parking Requirements that spells out parking requirements for retail spaces. A table showing times of day and nature of use is part of the Code and unique to the DG zoning district. The highest need for parking under the Code is 6 p.m. to midnight. Mr. Glancy explained how calculations for parking spaces were done based on the Code.

Mr. Glancy cited Section 230-28, (F), Shared Parking - In all other zoning districts there would be a 60% reduction in Code-required parking for a mixed-use project. The DG zoning district is not as favorable. He said it is unlikely the residential portion would see 100% occupancy and the retail breakdown is not known.

Mr. Glancy referenced the official City Council meeting minutes for June, 2012 (Exhibit C) when the DG zoning district was discussed. The intent was to connect the DG District with the downtown area via walking and biking paths and mass transit. The Code encourages higher-end clientele for both residential and retail. He speculated fewer vehicles would be used by residents because of public transit opportunities.

Mayor Reese inquired about ingress and egress. Mr. Stapen said DelDOT suggested one area for both, which is part of the plan.

In summary, Mr. Glancy reiterated the lot is unique because it is reduced by about 45% due to the wetlands. The wetlands create the special condition and unnecessary hardship, and cause an exceptional practical difficulty to the applicant.

Mayor Reese asked if the applicant has any plans to mitigate the drainage ditch at the intersection of Washington and 7th Streets.

Ms. Eileen Thorp (*sworn in by Mr. Losco*) is employed with CDA Engineering, Inc. and has particular knowledge of this site and how it is to be developed. The drainage ditch at the end of Washington Street is on TNCC land and the majority of the land in the rear of the property is in the flood plain. The livable space will be filled to raise it and a retaining wall will be installed on one edge of the property. Parking will be outside the drainage swale. The Mayor is concerned with losing parking spaces to flooding.

Mr. Bergstrom said it is possible to fill this property and not have an adverse impact. The applicant will go through a storm water management approval process. Buildings could be moved closer together at the center if needed to keep the parking out of the immediate flood plain elevation and install a retaining wall to hold the parking up. It is unknown if the elevation would be higher than the walking path. Livable space is above 9.5', underground parking is about 9.5' and perimeter parking is 9' to 8.5', sloping to the back of the site to help with drainage. Mr. Athey noted that perimeter parking is 5' above the existing elevation.

The size of the storm water layout will depend on how much credit is received for green roofs and what type of infiltration the applicant gets with the bio-retention area. In tidal regions such as this they are only required to treat quality and not quantity. They will do some type of storm water retention area because ground water is high in the subject area.

Green roof is a newer technology used to treat storm water management. It helps filter and meet rain water quality portions of Code requirements. Ms. Thorp said once they get to the full design phase the green roofs may reduce the storm water retention area. A 10' buffer must be maintained away from the wetlands that border this property on several sides. There will not be enough room to put in a parking facility to make up the difference being requested in the variance.

In summary, Mr. Glancy said that if requirements of the Code are followed, there is no impact to the public, there is no overflow parking in the street because it is not permitted, and will not use neighboring parking because it does not exist. Special conditions that create an unnecessary hardship or impractical difficulty exists because this parcel is a size that allows a certain size of project but the lack of land due to wetlands does not allow for additional parking areas. Parking requirements of the DG zoning district are restricted for the lot and project. No special benefit is being afforded to the applicant – the size of the lot restricts the project; this is the best that can be done on this lot with this project. Granting a variance will not grant special privilege – this is the minimum variance that will make the reasonable use of the land possible. Parking is the only item that does not meet Code.

He believes this project is what the City had in mind when it created the DG zoning code. If parking does not work on a project such as this it is his opinion the project does not work and the DG zoning district is compromised. The table used to calculate parking in the DG zoning district indicates 214 spaces are needed, because if there is 100% occupancy at all times and because the commercial portion is used at the times of day the table indicates the table becomes arbitrary. He believes this gives the Board room to determine how much of a variance is being granted. Allowing 166 spaces would not be contrary to the public interest.

The floor was open to the public.

John A. DiMondi (*sworn in by Mr. Losco*) testified he is familiar with the property as its former owner of 55 years. Seven (7) acres including road frontage was sold to the applicant and the remaining 7 acres were sold to the TNCC. He commended the applicant on the application but two bedroom units may be harder to sell in today's economy versus single bedroom units. He is concerned with the number of vehicles the apartments might generate. All street parking was eliminated as part of the DG zoning district. He does not believe a hardship exists. He suggested lowering the amount of units in the project to meet

the Code. He does not believe it is the Board's position to change the Code noting there are mechanisms in place to address changes.

Ervin Thatcher (*sworn in by Mr. Losco*) is opposed to granting the requested variance. He expressed concern with the number of vehicles generated by this project and the increase in traffic. He believes that other apartment projects will come to the area. The marsh is contaminated and putting more water into it will stir it up. He disagreed with earlier comments that interest in walking will be increased with the project.

Ennio Di'Alessandro (*sworn in by Mr. Losco*) agrees with Messrs. DiMondi and Thatcher that the amount of parking being requested is a problem and the size of the project could be lowered. The hardship is not the wetlands.

Concerning the 1-2 bedroom units, Mr. Glancy stated the Code uses the figure of 1.5 spaces per unit and there is no definition of number of bedrooms. The number of vehicles is speculative and contrary to what City Council is trying to attract. It is a walkable area. This is a unique situation and classic variance case. The parking portion fails only because half of the lot is wetlands.

The Board entered into deliberations.

Mr. Athey likes the project and wants it to succeed in some form. He believes this is the type of project the City envisioned when it adopted the DG zoning district. This is the first project for the DG zoning district. However, because City Council created the table specifically for the DG zoning district when the rest of the City uses 60% makes him think that City Council thought it through. In addition they deliberated over two years before adopting the Code. It is not the purview of this Board to rewrite the Code. He does not believe hardship exists since the wetlands have existed for years. The number of units could be reduced that would eliminate having to request a variance. He is concerned with the precedence issue of granting a variance based on the wetlands causing similar variance requests in the future. Granting a variance would negate this part of the Code. There are ways to change the DG zoning district code that could be considered. He suggested the alternative of a deed-restricted project with the possibility of conditional approval. Restrict the property so it is not more than 85% leased at any given time. He does not support the variance request based on the facts presented.

Mr. Losco informed that the Board has the ability to impose conditions on the granting of any variance.

Mayor Reese said the Board cannot rewrite the Code. He noted that a bus route passes by the property and people will walk to the bus stop making it a 'walkable' community. Public transportation is attractive to the younger generation. He does not believe the application should be returned to City Council.

Mr. Stapen asked about a lease for 40 off-site parking spaces that are within walking distance to the site. Mr. Bergstrom said it has to be deed restricted in perpetuity. City Council must approve the deed restriction first. Mr. Losco questioned whether a lease is adequate. Mr. Stapen suggested an enforceable lease for 40 spaces at all times that meets City Code or else those units cannot be rented based on the 40 spaces. If the lease fails they

cannot lease a certain percentage of apartment units. Mr. Athey does not see this scenario happening and is not comfortable with it.

Mr. Losco noted that if adequate off site walk able parking spaces is currently present, then no variance would be needed.

Mayor Reese suggested if parking spaces could be angled headed in that more parking spaces could be added.

Mr. Athey made a motion to table the application request for variance for no more than 90 days. Mayor Reese seconded and the motion was approved.

The hearing was adjourned at 7:57 p.m.

Respectfully submitted,

Debbie Turner
Stenographer

Exhibits:
Official City Council meeting minutes for June, 2012